

Supplemental Agenda Item No. 9A

Commuter Rail Committee

September 20, 2007

Location:

SANBAG Office
The Super Chief Conference Room
1170 W. 3rd Street, San Bernardino, CA
San Bernardino, CA

DISCUSSION CALENDAR

Amendment Number 2 to Contract 93-995 with the BNSF Railway (BNSF)

Approve Amendment Number 2 (“Implementation Agreement”) to Contract 93-995 Redlands-Pasadena Easement, Pasadena-Redlands Trackage Rights, SB Shops Trackage Rights and Cajon Trackage Rights Shared Use Agreement, with BNSF Railway (BNSF) providing compensation from BNSF for the right to use the Pasadena-Redlands Easement in the amount of \$3,028.03 as identified in the Financial Impact Section.

This item was not included in the agenda because it was still being negotiated.

Minute Action

SUPPLEMENTAL AGENDA ITEM: 9A

Date: September 20, 2007

Subject: Amendment Number 2 to Contract 93-995 with the BNSF Railway (BNSF)

Recommendation:* Approve Amendment Number 2 (“Implementation Agreement”) to Contract 93-995, Redlands-Pasadena Easement, Pasadena-Redlands Trackage Rights, SB Shops Trackage Rights and Cajon Trackage Rights Shared Use Agreement, with BNSF Railway (BNSF) providing compensation from BNSF for the right to use the Pasadena-Redlands Easement in the amount of \$3,028.03 as identified in the Financial Impact Section.

Background: On August 1, 2007, the Board approved Amendment Number 1 to Contract 93-995 with the BNSF Railway. That amendment allows BNSF to operate freight trains over the Pasadena-Redlands Easement (San Bernardino Flyover). Section 5 of the amendment acknowledge the BNSF would contribute an amount, to be determined through the larger negotiations between BNSF and four of the SCRRA member agencies, for the maintenance and repair of the Pasadena-Redlands Easement.

The attached “Implementation Agreement” provides that BNSF shall pay \$3,028.03 per month, adjusted annually by the AAR Cost Index. The amount BNSF will pay is an extension of the amount BNSF currently pays for operating over the Agency-owned San Gabriel Subdivision applied to the Pasadena-Redlands Easement.

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*Approved
Commuter Rail Committee*

Date: _____

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

Financial Impact: This item is not consistent with the adopted budget. The BNSF payments will be made to the SCRRA and will be used to offset the Agency's share of maintenance cost for the San Gabriel Subdivision. Assuming the Amendment takes effect on November 1, 2007, an additional \$24,224 will be received from BNSF for the maintenance and repair of the San Gabriel Subdivision, including the Pasadena-Redlands Easement. However, staff is not recommending any change in the Agency's contribution to SCRRA at this time.

Reviewed By: This item will be reviewed by the Commuter Rail Committee on September 20, 2007.

Responsible Staff: Michael Bair, Director of Transit and Rail Programs

**IMPLEMENTATION AGREEMENT
(SANBAG Contract 93-995-2)**

THIS AGREEMENT ("Agreement") dated as of October 3, 2007, is by and among the BNSF Railway ("BNSF"), San Bernardino Associated Governments ("SANBAG") and the Southern California Regional Rail Authority ("SCRRA").

RECITALS

WHEREAS, concurrently herewith BNSF and SANBAG are entering into that certain First Amendment to Shared Use Agreement (the "First Amendment") with respect to the Shared Use Agreement (Pasadena-Redlands Easement, Pasadena-Redlands Trackage Rights, SB Shop Trackage Rights and Cajon Trackage Rights) dated as of October 30, 1992 (the "SUA").

WHEREAS, Section 5 of the First Amendment contemplates that BNSF and SANBAG would agree in the future upon the amount of BNSF's contribution to maintenance and repair costs of the Pasadena-Redlands Easement (as defined in the First Amendment).

WHEREAS, SCRRA, which performs maintenance of the Pasadena-Redlands Easement, SANBAG and BNSF desire to set forth their agreement regarding BNSF's maintenance and repair contribution for the Pasadena-Redlands Easement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Commencing upon execution of this Agreement, BNSF shall pay \$3,028.03 per month, as adjusted below, to SANBAG or its designee, as BNSF's share of maintenance and repair costs for the Pasadena-Redlands Easement pursuant to Section 5 of the First Amendment (and Article 5.3 of the Shared Use Agreement as amended by the First Amendment) (the "Maintenance Contribution"). The Maintenance Contribution shall be increased or decreased annually on April 1 of each year (an "Adjustment Date") during the term of the SUA by the percentage of change, if any, that has occurred in the AAR Cost Index Table "C" West (excluding fuel) (the "Index") from the Index in effect on the immediately prior Adjustment Date to the Index in effect on the current Adjustment Date. The first such adjustment shall be made effective on April 1, 2008 based on changes in such Index from the Index in effect on April 1, 2007.

2. BNSF shall pay the Maintenance Contribution monthly in advance on the first day of each calendar month. If the amount of an adjustment to the Index has not been determined by an Adjustment Date, BNSF shall continue to make the Maintenance Contribution at the rate in effect immediately prior to the current Adjustment Date, and when such adjustment is calculated, it shall be applied retroactively to the Adjustment Date in question and BNSF will, with its next Maintenance Contribution, include the amount necessary to pay any shortfall in payments since such Adjustment Date (or take a credit equal to the amount of any excess payments, should the Index have decreased).

3. The parties acknowledge that this Agreement fully implements and satisfies Section 5 of the First Amendment (and, correspondingly, the second sentence of Article 5.3 of the SUA, as amended by the First Amendment).

4. This Agreement shall be binding upon and shall inure to the benefit of BNSF, SANBAG and SCRRRA and their respective successors or permitted assigns.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6. This Agreement may be executed in any number of counterparts, no one of which need be executed by both parties, each one of which shall be deemed an original, but all of which taken together shall constitute but one agreement. Signature pages from one duplicate original may be attached to other duplicate originals of this Agreement to form one document.

IN WITNESS WHEREOF, the parties to this Agreement have caused their duly authorized representatives to execute it as of the day and year first set forth herein.

BNSF:

BNSF Railway

By: _____
Name: _____
Title: _____

SANBAG:

San Bernardino Associated
Governments

By: _____
Name: _____
Title: _____

SCRRRA:

Southern California Regional
Rail Authority

By: _____
Name: _____
Title: _____

SANBAG Contract No. 93-995-2

by and between

San Bernardino Associated Governments

and

BNSF Railway

for

BNSF compensation for maintenance and repair of Pasadena-Redlands Easement**FOR ACCOUNTING PURPOSES ONLY**☐ Payable

Vendor Contract # _____

Retention:

☐ Original☐ Receivable

Vendor ID _____

☐ Yes _____ % ☐
No☐ Amendment

Notes: Payment of \$3,028.03/month adjusted annually by AAR. Payments will be made to SCRRA

Original Contract: \$ _____

Previous Amendments Total: \$ _____

Previous Amendments Contingency Total: \$ _____

Contingency Amount: \$ _____

Current Amendment: \$ _____

Current Amendment Contingency: \$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL → \$ _____

↓ Please include funding allocation for the original contract or the amendment.

| <u>Task</u> | <u>Cost Code</u> | <u>Funding Sources</u> | <u>Grant ID</u> | <u>Amounts</u> |
|--|------------------|--------------------------------|---------------------------|----------------|
| _____ | _____ | _____ | _____ | \$ _____ |
| Original Board Approved Contract Date: | <u>11/4/92</u> | Contract Start: <u>11/4/92</u> | Contract End: <u>Open</u> | |
| New Amend. Approval (Board) Date: | <u>10/3/07</u> | Amend. Start: <u>10/3/07</u> | Amend. End: <u>Open</u> | |

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**Approved Budget
Authority →**Fiscal Year: _____
\$ _____**Future Fiscal Year(s) –
Unbudgeted Obligation →**

\$ _____

Is this consistent with the adopted budget? ☐ Yes ☒ No

If yes, which Task includes budget authority? _____

If no, has the budget amendment been submitted? ☐ Yes ☒ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**☐ Intergovernmental☒ Private☐ Non-Local☐ Local☐ Partly LocalDisadvantaged Business Enterprise: ☒ No ☐ Yes _____ %Task Manager: **Michael Bair**Contract Manager: **Michael Bair**

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

